doubt, upon the nature of the rights they assert and the practical consequences likely to flow from the order they seek. In the serious and urgent situation faced by the appellants there are reported cases which have held that an injunction will be awarded to restrain repeated breaches of regulatory legislation where the sanctions of the criminal law have proved inadequate. In *Attorney-General* v. *Harris*[11] it was held that persistent and deliberate flouting of the law was in itself a grave and serious injury to the public, which warranted the grant of an injunction where the monetary penalties imposed by statute were ineffective to secure compliance with the law. An injunction has also been awarded against individuals breaking or proposing to break the criminal law where the matter is very urgent, notwithstanding that the criminal courts have not yet dealt with this issue: see *Attorney-General* v. *Melville Construction Co.*[12] (tree preservation order); *Attorney-General* v. *Chaudry*[13] (breach of fire safety law); *Attorney-General* v. *Times Newspapers Ltd.*[14] (where publication of article would have been criminal contempt of court).

The second inquiry is directed to whether, on the balance of convenience, injunctive relief should be granted.

After considering the facts so far as they appear from the affidavits, and the authorities, we are of the opinion that in all the circumstances of the case, there is a reasonable prospect of the trial court granting an injunction, whereas if breaches of the law are allowed to continue, it will be impossible or useless to grant it at the trial. In such circumstances we consider it right to grant an urgent relief of an interlocutory nature which works in the interest of justice and also in the interests of the proper functioning of the appellants as a local authority. The case is brought by them solely for the protection of the public interest in their area and in the case where relief is brought by a local authority in the public interest the court gives weight to such interest in deciding where the balance of convenience lies.

Appeal allowed.

Solicitors: *Presgrave & Matthews; Jag-Jit Singh & Co.; Mathuram & Co.*

VOON AH SHOON v. PUBLIC PROSECUTOR

[A.C.J. (Yusoff J.) June 7, 1977 & January 30, 1978]
[Kuching — Criminal Appeal No. K. 23 of 1976]

Bribery and Corruption — Corruption — "Agent" — Meaning of — Prevention of Corruption Act, 1961, s. 4(c) — Criminal Procedure Code (F.M.S. Cap. 6), ss. 173, 176, 278 and 307.

The appellant in this case was an Administrative Assistant in the Education Department, Sarawak. He was in charge of tenders and supplies. On July 1, 1971 the department issued purchase orders for the supply of articles to a college. Before the said equipment had been supplied, the appellant instructed the firm's proprietor to submit bills in respect of the said equipment. On December 13, 1971 the appellant, though knowing that the equipment had not been received by the college certified the receipts on both the local purchase orders to the effect that the articles in the local purchase orders had been handed to him in good condition. After certifying the said orders, the appellant handed them to the accounts clerk in his department for payment of the equipment allegedly received by him. On December 20, 1971 the said proprietor received payment for the said equipment alleged to have been supplied to the college. The appellant was charged and convicted for having committed an offence under section 4(c) of the Prevention of Corruption Act, 1961. He appealed.

Held, dismissing the appeal: (1) the definition of the word "agent' in section 2 of the Prevention of Corruption Act which deals with criminal liability of an individual cannot be equated with the definition of the same word in the Contracts Act which deals with civil rights and liabilities of a person. Both laws are not *in pari materia* and the position and liability of an agent in each respective law are different altogether;

(2) the learned magistrate had correctly held that the agent in this case was an agent, being a person serving under a public body as defined in section 2 of the Prevention of Corruption Act and "public body" would include the Government of Malaysia.

Cases referred to:-

(1) *R.* v. *Barrett (George)* [1976] 3 All E.R. 895.
(2) *Lai Fook Kee* v. *Public Prosecutor* [1970] 1 M.L.J. 134.
(3) *Sage* v. *Eicholz* [1919] 2 K.B. 171.
(4) *Public Prosecutor* v. *A.G. Kyle-Little & Anor.* [1971] 1 M.L.J. 125.
(5) *In re London & Globe Finance Corporation Ltd.* [1903] 1 Ch. 728.

CRIMINAL APPEAL.

K.C.I. Reddy for the appellant.

Abdul Hamid bin Mohammed Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yusoff J.: The appellant, Voon Ah Shoon, appeals against his convictions and sentence on the following two charges under section 4(c) of the Prevention of Corruption Act, 1961.

"First Charge

That you, on December 13, 1971, sometime before noon, at the Education Department (Headquarters), Kuching, in the First Division, in the State of Sarawak, being an agent of the Government of Malaysia, to wit, Administrative Assistant attached to the Education Department, Sarawak did knowingly use with intent to deceive your principal a document, to wit, Local Purchase Order No. 251308 dated July 1, 1971, in respect of which your principal is interested and which document contains statements which are false in material particulars, namely, receipt certificate whereby you certified that the articles quoted in the said Local Purchase Order No. 251308 have been handed to you in apparent good condition whereas none of such articles had been supplied, either to you or to Batu Lintang Training College, Kuching, and which to your knowledge is intended to mislead your principal and that you have thereby committed an offence under section 4(c) and punishable under section 4 of the Prevention of Corruption Act, 1961, Law of Malaysia.

Second Charge

That you, on December 13, 1971, sometime before noon, at the Education Department (Headquarters), Kuching, in the First Division, in the State of Sarawak, being an agent of the Government of Malaysia, to wit, Administrative Assistant attached to the Education Department, Sarawak did knowingly use with intent to deceive your principal a document, to wit, Local Purchase Order No. 251309 dated July 1, 1971, in respect of which your principal is interested and which document contains statements which are false in material particulars namely, receipt certificate whereby you certified that the articles quoted in this Local Purchase Order No. 251309 have been handed to you in apparent good condition whereas only 8 items thereof have been supplied to the Batu Lintang Training College, Kuching, on July 28,

1972, and which to your knowledge is intended to mislead your principal, and that you have thereby committed an offence under section 4(c) and punishable under section 4 of the Prevention of Corruption Act, 1961, Law of Malaysia."

The facts show that the appellant was an Administrative Assistant in the Education Department, Sarawak. He was in charge of tenders and supplies of equipment to schools and colleges maintained by the department. On 1st of July 1971 the department issued two local purchase orders Nos. 251308 and 251309 (Exhibits P4 and P4A) to a firm known as Jan Fok Shin whose proprietor was one Mr. Pang Miau Tung (PW5). The purchase orders were for the supply of science equipment to Batu Lintang Training College at Kuching to the value of $4,931.08.

On 10th of December, 1971 before the firm had supplied any of the equipment ordered for the college, the appellant instructed Mr. Pang to submit bills in respect of those equipment to him. Following that instruction, Mr. Pang handed all the bills to the appellant and at the same time telling him that the equipment had not been supplied. On December 13, 1971 the appellant, though knowing that those equipment had not been received by the college certified the receipts on both the local purchase orders to the effect that the articles in the local purchase orders had been handed to him in good condition. After certifying the local purchase orders, the appellant handed them to the accounts clerk in his department with instruction to prepare payment vouchers in respect of the equipment allegedly received by him. These vouchers were prepared by one Chong Tze Siew (PW7) who then passed them for signature by the head of the department Abang Naim (PW4).

After the vouchers had been signed they were sent to the Treasury for payment. On December 20, 1971, Mr. Pang received the payment for the equipment alleged to have been supplied to the college.

There are eight grounds of appeal lodged by the appellant. The first is a matter of procedure contending that the learned Magistrate was wrong in law in that the Magistrate reviewed, amplified, supplemented his judgment delivered in open court on August 26, 1976 by adding additional grounds.

The notes of evidence show that at the conclusion of the trial on 26th of August, 1976 the learned Magistrate noted in the record of his findings pronounced in open court that the prosecution had discharged its burden both legal and evidential to prove the case beyond reasonable doubt. He also noted briefly that all the ingredients of the charge had been proved and that he found the appellant guilty of both charges and convicted him adding that "reasons may be given later if necessary".

Counsel for appellant who also appeared in the lower court contended that he did not hear the Magistrate utter the last sentence in that he would give his reasons later if necessary and further contended that this last sentence was added by the Magistrate after delivery of his judgment. He argued that this was contrary to section 278 of the Criminal Procedure Code (F.M.S. Cap. 6) which provides that no court other than High Court shall alter or review its judgment having once recorded it etc. and that by serving his grounds of judgment consequent to this appeal the Magistrate has reviewed his findings, amplified or supplemented it.

I do not consider that this ground of appeal has merit. Trials before Magistrates are summary trials governed by Chapter XIX of the Criminal Procedure Code (Cap. 6). Section 173 para. (m)(2) provides that if the court finds the accused guilty the court shall pass sentence according to law. Section 176(ii) requires that the court shall keep records of these findings and sentence. On appeal against this finding or sentence section 307 of the Code applies. Subsection (iii) of section 307 provides that when a notice of appeal has been lodged the court appealed from shall make a signed copy of the grounds of decision and cause the same to be served upon the appellant or his advocate.

From the record of the proceedings it appears that the Magistrate gave his findings and passed sentence on the appellant immediately after the trial was concluded on 26th of August, 1976. His finding or judgment as referred to by the counsel, cannot be otherwise than an oral judgment and by virtue of subsection (iii) of section 307 it does not preclude the Magistrate from writing his ground of decision and serving it on the appellant upon notice of appeal lodged by the appellant, irrespective of whether or not the Magistrate had written in his finding to the effect that he would give his reasons later if necessary. This is amplified by section 176(ii) para. (x) of the Code which also provides that among the records to be kept by Magistrates, in the event of appeal being lodged shall include the ground of decision, if the judgment was oral, which record must be transmitted to the High Court under section 308 of the Code.

In this event I rule that section 278 of the Criminal Procedure Code does not apply in this case.

The learned counsel also contended that the ground of decision served upon him was not a signed copy by the Magistrate. It was only a certified copy. I also consider that this ground has no merit. In my view, such omission does not occasion a failure of justice and is curable under section 422 of the Criminal Procedure Code.

The gravamen of his submission on the remaining grounds of appeal, as was put by the learned counsel, was that the appellant was not an "agent" and that the appellant did not "use" the local purchase orders as opposed to making them within the meaning of the Prevention of Corruption Act. He also submitted that the appellant had no intention to mislead the Government and that the Government was not misled by the actions of the appellant.

This submission encompasses almost all the essential ingredients needed to be proved by the prosecution on charges under section 4(c) of the Act preferred against the appellant. Both charges specified that on the material dates the appellant being an agent of the Government of Malaysia did knowingly use with intent to deceive his principal, documents (Exhibits P4

and P4A) which, to his knowledge was intended to mislead his principal.

The facts show that at the time the offence was committed, the appellant was working in the Education Department stationed at Kuching, Sarawak. His salary was paid from Federal Government funds. He was in charge of purchase and acquisition of stores, equipment, text-books for schools and colleges. He was also responsible for calling of tenders and quotations from suppliers for the purchase of those stores and equipment. On those facts and applying the definition in section 2 of the Act, the Magistrate found that the appellant was an agent, being a person serving under a public body.

The learned counsel for the appellant dealt at length in his written submission on the meaning of the word "agent" as defined in section 2 of the Act. In his view the interpretation of the word should mean that the person employed by the Government of Malaysia should also act in representative capacity for the Government. He submitted that unless an employee acts as the representative of the Government it cannot be stated that he is an agent on the basis of his employment only. To support that view he referred to the definition of the word "agent" in Contracts Act, 1950 in which section 135 defines as:

"...a person employed to do any act for another to represent another in dealings with third person."

To illustrate his view he also referred to the distinction between an agent and a servant in *Halsbury's* Laws of England Vol. 1 at page 145.

With due respect, basically, I think that is a wrong approach towards interpretation of a criminal law. The definition of the word 'agent' in section 2 of the Prevention of Corruption Act which deals with criminal liability of an individual cannot be equated with the definition of the same word in Contracts Act which deals with civil rights and liabilities of a person. Both laws are not *in pari materia* and the position and liability of an agent in each respective law are different altogether.

In my opinion the learned Magistrate has correctly held that the appellant in this case was an agent, being a person serving under a public body as defined in section 2 of the Prevention of Corruption Act and "public body" is defined to include the Government of Malaysia — see *R.* v. *Barret (George)*[1] on interpretation of 'agent' in section 1(3) of the English Prevention of Corruption Act, 1906 which is similar to our Prevention of Corruption Act of 1961.

The next important submission by the learned counsel rested on the term "using a document containing false particulars". He contended that the word 'use' is not defined in the Act and by popular dictionary meaning, the word means "putting to a purpose, advantageous purpose to which anything can be applied". On this meaning of the word he argued that the appellant did not make use of the local purchase orders (Exhibits P4 and P4A) though the appellant admitted that he had made endorsements on the local purchase orders to the effect that he had received certain stores when he did not in fact receive them. It was further argued that in that sense the appellant could not have used both exhibits for any purpose unless those exhibits by themselves authorised payments.

In my view, the words 'knowingly use' in the Act is a question of fact to be decided by the trial Magistrate — see *Lai Fook Kee* v. *Public Prosecutor.*[2] In his ground of decision the Magistrate found that the appellant had "called up PW5 to submit false invoices, falsely certified the receipt certificates (P4 etc.) and store certificates (P6 etc.), instructed PW7 to prepare the payment vouchers to the Treasury for payment to be effected to JFS".

These findings of facts by the Magistrate are sufficiently supported by the evidence of PW5 and PW7, and I cannot say that he is wrong.

On the argument that the word 'use' in section 4(c) of the Prevention of Corruption Act purports the meaning that the purpose to which anything is applied must be advantageous to the person, I would say that this question has been many times decided by our courts that on a charge under that section, the prosecution need not prove that the agent has been corrupted as distinct from the previous two sections 4(a) and 4(b). Reference by the Magistrate to *Sage* v. *Eicholz*[3] on this question of law and his application of the principle therein do not call for my comment.

Also under this heading of his submission the learned counsel raised the point that the local purchase orders do not fall under the category of 'other documents' for the purpose of section 4(c) of the Act. He argued that they cannot be considered to be of the same genus as receipt or account.

This point was not raised in the court below. But it is sufficient to state here that the case of *Public Prosecutor* v. *A.G. Kyle-Little & Anor.*[4] cited by the counsel himself, decides that 'other document' in section 4(c) of the Act, "should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account for example bills, cheques, indents, pay-roll and invoices". I am in agreement with the decision in that case and would add that local purchase orders are official requisition for stores in the same way as indents and they are paper writing dealing with money matters falling in the same category as receipt or account.

The learned counsel's further submission was that the signing of the certificates receiving the stores on the local purchase orders by the appellant was purely innocuous and that the appellant had not intended to deceive his principal, the Government. He also submitted that the appellant could not have the knowledge that the certificates on the local purchase orders which he had signed were intended to mislead the Government.

The evidence shows that when he signed the certificates receiving the goods referred to in the local purchase orders, the appellant knew that the goods had not been received by Batu Lintang College and that in fact Mr. Pang, the supplier had informed him to that effect. In spite of this knowledge the appellant signed the certificates and passed them to PW7

with instruction to prepare payment vouchers in favour of Mr. Pang.

On that evidence it would be difficult to agree with the learned counsel that the appellant's act was innocuous and that he had not intended to deceive the Government. As Buckley J. in *Re London & Globe Finance Corporation Ltd.*[5] says "to deceive is by falsehood to induce a state of mind...". The appellant in this case had induced that state of affairs whereby it resulted in deceiving the Government into paying for the goods it had not received.

In this regard the learned counsel laboriously tried to shift the blame on PW4, who had signed the vouchers and authorised payment, arguing that PW4 was not deceived by the certificates signed by the appellant because PW4 had trusted him and had accepted similar certificates signed by the appellant before. To my mind this exercise is futile. The fact that PW4 had trusted him, which trust was built over a period of time, by the appellant himself, would only allow the appellant better opportunity to deceive him. In my view the appellant deliberately employed a system to commit this offence.

On his submission that the appellant could not have the knowledge that the certificates were intended to mislead the Government, the learned counsel argued that in this case PW4, who had been deceived, was the agent of the appellant's principal and not the principal himself.

With due respect, this argument is most difficult for me to follow. It is an accepted principle that the Government is an abstract norm. The Government works through its agencies. All ministries, departments and public bodies are its agencies and its employees are its agents. An offence may be committed on the Government through these agents or agencies. It is immaterial whether the offender is an individual or its own agent.

In the present case the appellant had intended to mislead the Government by practising deceit on PW4 in which event the Government was misled into paying someone for goods it had not received.

In these circumstances, I hold that there is sufficient evidence to support convictions of the appellant on both the charges. There are other grounds of appeal which the learned counsel has given less emphasis and I consider them to be of no merit.

This appeal is therefore dismissed and convictions confirmed. I will now hear submissions on sentence which was not done during this appeal nor in the court below.

Appeal dismissed.

Solicitors: *K.C.I. Reddi & Co.*

LIM HUI LIAN v. C.M. HUDDLESTAN

[O.C.J. (Yusoff J.) October 31, 1977 & March 10, 1978]
[Kuching — Matrimonial Cause No. K. 20 of 1976]

Family Law — Foreign marriage — Petitioner domiciled in Sarawak — Divorce — Uncontested divorce — Homosexual husband — Sarawak Matrimonial Causes Ordinance (Cap. 94), ss. 4, 6(1)(b), 3(b), & 7.

The petitioner in this case prayed for dissolution of marriage on the ground that circumstances had arisen which in the opinion of the court, made it reasonable and just that the marriage should be dissolved, under section 6(3)(b) of the Sarawak Matrimonial Causes Ordinance.

The petitioner belonged to the Chinese community in Sarawak. She married the respondent in Canada in June 1972. The respondent was a citizen of Canada. In July 1972 she returned to Sarawak, followed by the respondent. In January 1975 the respondent left the matrimonial home and went to Singapore on his way back to Canada. He had indicated to the petitioner that he would not return. While the marriage was subsisting, the petitioner said that the respondent had taken drugs and developed a propensity for homosexuality which she had not encouraged nor consented to. The respondent had brought make friends of his own race back to the matrimonial home and on these occasions he also took drugs and slept with them. In two letters written to the petitioner, the respondent had indicated that he was a homosexual person.

Held, allowing the petition: (1) the provisions of the Sarawak Matrimonial Causes Ordinance (Cap. 94) though made applicable to foreign marriages, were designed to protect local communities;

(2) the court could exercise its jurisdiction to dissolve a foreign marriage on grounds that circumstances had arisen which make it reasonable and just that the marriage should be dissolved, where there was a need to protect local communities.

Cases referred to:-

(1) *Sim Kim Ong* v. *Goh Phaik Sooi* [1976] 1 M.L.J. 232.

(2) *Stratham J.T.* v. *Stratham J.C.* [1929] P.D. 131.

(3) *Davidson* v. *Davidson* [1953] 1 W.L.R. 387.

MATRIMONIAL CAUSE.

Loke Yik Ping for the petitioner.

Respondent not contesting.

Cur. Adv. Vult.

Yusoff J.: This is the wife's petition for dissolution of marriage on the ground that circumstances have arisen which in the opinion of the court, make it reasonable and just that the marriage should be dissolved, under section 6(3)(b) of Sarawak Matrimonial Causes Ordinance (Cap. 94).

The marriage was celebrated in Canada. The petitioner is of Asiatic race and before the date of petition has been habitually resident in Sarawak for more than two years. The respondent is a citizen of Canada. He does not contest this petition.

On first impression, I was of the opinion that by reason of special provisions relating to residence and some grounds for petition for dissolution of marriage in Cap. 94, including the present, this special ground is not available to parties who contracted a foreign marriage.

These special provisions are: with respect to qualification to petition, provisos (i) and (ii) to section 4 which provide that: